



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0047; FRL-9707-3]

**Partial Approval and Disapproval of Air Quality Implementation
Plans; Nevada; Infrastructure Requirements for Ozone and Fine
Particulate Matter**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Nevada to address the requirements of section 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 and 2006 NAAQS for fine particulate matter (PM_{2.5}). Section 110(a) of the CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA. On February 1, 2008, February 26, 2008, September 15, 2009, and December 4, 2009 the Nevada Division of Environmental Protection (NDEP) submitted revisions to Nevada's SIP, which describe the State's provisions for implementing, maintaining, and enforcing the

standards listed above. On July 5, 2012, NDEP submitted a supplement to these SIP revisions, including certain statutory and regulatory provisions. We encourage the State to submit a revised SIP to address the deficiencies identified in this proposal, and we stand ready to work with the State to develop a revised plan. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R09-OAR-2011-0047, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: r9_airplanning@epa.gov
3. *Fax*: 415-947-3579
4. *Mail or deliver*: Rory Mays (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information

provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with

the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3227, *mays.rory@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background

I.A. Statutory Framework

Section 110(a)(1) of the CAA requires each state to submit to EPA, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the "implementation, maintenance, and enforcement" of such NAAQS. EPA refers to these specific submissions as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS. The infrastructure SIP elements include:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.

- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment New Source Review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning

requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

I.B. Regulatory History

On July 18, 1997, EPA issued a revised NAAQS for ozone¹ and a new NAAQS for fine particulate matter (PM_{2.5}).² EPA subsequently revised the 24-hour PM_{2.5} NAAQS on September 21, 2006.³ Each of these actions triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the new or revised NAAQS.

On March 10, 2005, EPA entered into a Consent Decree with EarthJustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether states had made required complete SIP submissions, pursuant to sections 110(a)(1) and 110(a)(2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 PM_{2.5} NAAQS. EPA made such findings for the 1997 ozone NAAQS, as

¹ The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

² The annual PM_{2.5} standard was set at 15 micrograms per cubic meter (µg/m³), based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations from single or multiple community-oriented monitors and the 24-hour PM_{2.5} standard was set at 65 µg/m³, based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each population-oriented monitor within an area (62 FR 38652).

³ The final rule revising the 24-hour NAAQS for PM_{2.5} from 65 µg/m³ to 35 µg/m³ was published in the Federal Register on October 17, 2006 (71 FR 61144).

published on March 27, 2008 (73 FR 16205), and for the 1997 PM_{2.5} NAAQS, as published on October 22, 2008 (73 FR 62902). For the 1997 ozone NAAQS, EPA found that Nevada had failed to make a complete submittal to address the requirements of section 110(a)(2).⁴ For the 1997 PM_{2.5} NAAQS, EPA found that Nevada had made a complete submittal to address the requirements of section 110(a)(2).

I.C. Scope of the Infrastructure SIP Evaluation

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.⁵ Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or

⁴ Notwithstanding EPA's finding of failure to submit, footnote 2 of the findings notice noted that Nevada had submitted its infrastructure SIP for the 1997 ozone NAAQS on February 1, 2008. (See 73 FR 16205 at 16207).

⁵ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5).

malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth.

EPA intended the statements in other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within

the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues

to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁶ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁷

⁶ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁷ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25,162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

Notwithstanding that section 110(a)(2) provides that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁸ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Likewise, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections.⁹ Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS

⁸ See, e.g., *Id.*, 70 FR 25,162, at 63 - 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁹ For example, EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS. See, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I-X, dated August 15, 2006. In addition, EPA bifurcated the action on these "interstate transport" provisions within section 110(a)(2) and in most instances, substantive administrative actions occurred on different tracks with different schedules.

could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.¹⁰

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, i.e., the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements "as applicable." In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and PM_{2.5} NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹¹ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the "infrastructure" elements for SIPs, which it further described as the "basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of

¹¹ See, "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I - X, dated October 2, 2007 (the "2007 Guidance").

the standards." ¹² As further identification of these basic structural SIP requirements, "attachment A" to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended "to constitute an interpretation of" the requirements, and was merely a "brief description of the required elements."¹³ EPA also stated its belief that with one exception, these requirements were "relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions."¹⁴ For the one exception to that general assumption, however, i.e., how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its

¹² Id. at page 2.

¹³ Id. at attachment A, page 1.

¹⁴ Id. at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicate that the statute is not so "self explanatory," and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 PM_{2.5} NAAQS.¹⁵ In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS, but were germane to these SIP submissions for the 2006 PM_{2.5} NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to

¹⁵ See, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I - X, dated September 25, 2009 (the "2009 Guidance").

interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a comprehensive review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is

for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁶ Section 110(k)(6) authorizes EPA to correct errors in past

¹⁶ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, "Finding of Substantial Inadequacy of

actions, such as past approvals of SIP submissions.¹⁷

Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁸

II. The State's Submittals

On February 1, 2008, the Nevada Division of Environmental Protection (NDEP) submitted the "CAA 110(a)(2)(A) - (M)

Implementation Plan; Call for Utah State Implementation Plan Revision," 76 FR 21,639 (April 18, 2011).

¹⁷ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82,536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁸ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (January 26, 2011) (final disapproval of such provisions).

Requirements in the Current Nevada State Implementation Plan (SIP) for 8-Hour Ozone" to address the infrastructure SIP requirements for the 1997 ozone NAAQS ("2008 Ozone Submittal").¹⁹ On February 26, 2008, NDEP submitted the "CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM_{2.5}" to address the infrastructure SIP requirements for the 1997 PM_{2.5} NAAQS ("2008 PM_{2.5} Submittal").²⁰ On September 15, 2009, NDEP submitted the "CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM_{2.5}" to address the infrastructure SIP requirements for the 2006 PM_{2.5} NAAQS ("2009 PM_{2.5} Submittal").²¹ Each of these three submittals included a cover letter from the NDEP Administrator to the Region IX Regional Administrator, a table listing the elements of CAA section 110(a)(2) followed by NDEP's discussion of the provisions in the existing Nevada SIP that address each element, and attachments that compile the State rules and statutes that are currently approved into the Nevada SIP.

On December 4, 2009, NDEP submitted the "Current CAA 110(a)(2)(A)-(M) Requirements in the Washoe County Portion of the Nevada PM_{2.5} SIP" to address the infrastructure SIP

¹⁹ See letter dated February 1, 2008 from Leo M. Drozdoff, Administrator, NDEP, to Wayne Nastri, Regional Administrator, EPA Region 9.

²⁰ See letter dated February 26, 2008 from Leo M. Drozdoff, Administrator, NDEP, to Wayne Nastri, Regional Administrator, EPA Region 9.

²¹ See letter dated September 15, 2009 from Leo M. Drozdoff, Administrator, NDEP, to Laura Yoshii, Acting Regional Administrator, EPA Region 9.

requirements for the 2006 PM_{2.5} NAAQS for the Washoe County portion of the State ("2009 PM_{2.5} Supplement").²² Like the three earlier submittals, the 2009 PM_{2.5} Supplement contained a table listing the elements of CAA section 110(a)(2) followed by Washoe County's discussion of the provisions in the existing (Washoe County portion of the) Nevada SIP that address each element, and attachments that include the Washoe County District Board of Health (DBOH) air pollution control regulations cited in the County's evaluation of the adequacy of the existing SIP for Washoe County in meeting the infrastructure SIP requirements for PM_{2.5},²³ the PSD delegation agreement between the Washoe County District Health Department and EPA, and an Interlocal Agreement among the Washoe County District Board of Health, Washoe County, and the cities of Reno and Sparks concerning the Washoe County District Health Department.

On July 5, 2012, NDEP submitted "Revisions to Nevada's Clean Air Act § 110(a)(2) State Implementation Plan Submittals; Parallel Processing Request" to address certain infrastructure

²² See letter dated December 4, 2009 from Leo M. Drozdoff, Administrator, NDEP, to Laura Yoshii, Acting Regional Administrator, EPA Region 9.

²³ A small number of Washoe County regulations included as attachment B to the 2009 PM_{2.5} Supplement have already been approved into the Nevada SIP (e.g., the emergency episode provisions); most have not been approved. However, we understand that the submittal of the Washoe County regulations in attachment B was for information purposes, and that the specific Washoe County regulations submitted for approval into the SIP include only those submitted as part of NDEP's submittal dated July 5, 2012. We also understand attachment C to have been submitted for information purposes.

SIP requirements for the 1997 ozone, 1997 PM_{2.5}, and 2006 PM_{2.5} NAAQS ("2012 Submittal").²⁴ This submittal served as a supplement to the four prior ozone and PM_{2.5} infrastructure SIP submittals and was submitted under the parallel processing mechanism provided by 40 CFR Part 51, Appendix V, Section 2.3. The 2012 Submittal includes a number of provisions, including statutes, regulations, and non-regulatory provisions, that are currently effective under State law but that have not been adopted specifically for submittal to EPA as SIP revisions under CAA section 110. NDEP also included unofficial copies of these provisions with a request for "parallel processing"²⁵ and stated its intention to open a public comment period on July 13, 2012, provide opportunity for a public hearing on August 15, 2012, and to submit these provisions as a formal SIP submittal by the end of August 2012.

²⁴ See letter dated July 5, 2012 from Colleen Cripps, Administrator, NDEP, to Jared Blumenfeld, Regional Administrator, EPA Region 9. This SIP revision was also submitted to revise Nevada's infrastructure SIP submittal for the 2008 Lead (Pb) NAAQS, which was submitted on October 12, 2011. EPA will address the infrastructure SIP requirements for the 2008 Pb NAAQS in a separate rulemaking.

²⁵ Under EPA's "parallel processing" procedure, EPA proposes rulemaking action concurrently with the State's proposed rulemaking. If the State's proposed plan is changed, EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, EPA will publish a final rulemaking on the plan after responding to any submitted comments. Final rulemaking action by EPA will occur only after the plan has been fully adopted by Nevada and submitted formally to EPA for approval into the SIP. See 40 CFR part 51, appendix V, section 2.3. We note that because NDEP's rulemaking process here is for purposes of adopting the 2012 Submittal as a SIP revision under CAA section 110, including existing statutes and regulations (without revision) and updating non-regulatory provisions, we do not expect any significant changes between the proposed and final plans.

NDEP did not provide notice and an opportunity for public comment or hearing prior to adoption and submittal of the 2008 Ozone Submittal, the 2008 PM_{2.5} Submittal, the 2009 PM_{2.5} Submittal, or the 2009 PM_{2.5} Supplement in reliance on EPA guidance that indicated that, where a State was simply certifying that the existing SIP met the infrastructure requirements with respect to the new or revised NAAQS, no public process was required. EPA's views on this matter have changed, and we now recognize submittals by States in response to the requirements of CAA section 110(a)(1) do represent SIP submittals, even if they simply certify the existing SIP as sufficient.

As SIP revisions, such submittals require public notice, and opportunity for comment and hearing. We find, however, that, in this instance, because NDEP has provided notice, and opportunity to comment and hearing in connection with the 2012 Submittal, described above, and because NDEP's notice refers to the 2008 Ozone Submittal, the 2008 PM_{2.5} Submittal, the 2009 PM_{2.5} Submittal, and the 2009 PM_{2.5} Supplement, in addition to the 2012 Submittal, NDEP will have met the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102 for all five infrastructure SIP submittals on which we

are proposing action today when NDEP submits the related documentation to us with the 2012 Submittal.

We are proposing to act on all five submittals since they collectively address the infrastructure SIP requirements for the 1997 ozone, 1997 PM_{2.5}, and 2006 PM_{2.5} NAAQS. We refer to them collectively herein as "Nevada's Infrastructure SIP Submittals."

III. EPA's Evaluation and Proposed Action

EPA has evaluated Nevada's Infrastructure SIP Submittals and the existing provisions of the Nevada SIP for compliance with the CAA section 110(a) requirements for the 1997 ozone, 1997 PM_{2.5}, and 2006 PM_{2.5} NAAQS. Our three Technical Support Documents (TSDs) contain more detailed evaluations and are available in the public docket for this rulemaking, which may be accessed online at <http://www.regulations.gov>, docket number EPA-R09-OAR-2011-0047. The three Technical Support Documents are as follows: 1) "Overarching TSD" for CAA sections 110(a)(2)(A) through (C), parts of (D) and (E), and (F) thru (M); 2) "2006 PM_{2.5} Transport TSD" for CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS; and 3) "Section 128 TSD" for CAA section 110(a)(2)(E)(ii), which addresses compliance with the conflict of interest requirements of CAA section 128. All proposals below apply to our evaluation of Nevada's infrastructure SIPs for the 1997 ozone, 1997 PM_{2.5}, and 2006 PM_{2.5} NAAQS unless a specific

distinction is made as to which of Nevada's five submittals or which of these three NAAQS a given proposal applies.

III.A. Proposed Approvals

Based upon our evaluation as presented in the TSDs, EPA proposes to approve Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C)(in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport. (Please see our 2006 PM_{2.5} Transport TSD for our evaluation of Nevada's 2009 PM_{2.5} Submittal and 2009 PM_{2.5} Supplement regarding interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.)
- Section 110(a)(2)(D)(ii)(in part): Interstate pollution abatement and international air pollution
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional

government agencies. (Please see our Section 128 TSD for our evaluation of Nevada's Infrastructure SIP Submittals regarding the conflict of interest requirements of section 110(a)(2)(E)(ii).)

- Section 110(a)(2)(F)(in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J)(in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K)(in part): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

In connection with our proposed partial approval of Nevada's Infrastructure SIP Submittals, we are proposing to approve certain statutes, regulations, and other materials, that were included in the 2009 PM_{2.5} Supplement and the 2012 Submittal to supplement the four earlier submittals.

First, with respect to section 110(a)(2)(E)(i)(i.e., necessary assurances for adequate personnel, funding, and

authority), EPA is proposing to approve an interlocal agreement among the Washoe County District Board of Health, Washoe County and the cities of Reno and Sparks concerning the Washoe County District Health Department, and a comprehensive revision to Section 12 ("Resources") of the Nevada SIP. The interlocal agreement was submitted as attachment D to the 2009 PM_{2.5} Supplement and the revision to Section 12 was submitted as attachment A to Nevada's 2012 Submittal. Nevada's revision to Section 12 ("Resources") includes updated information concerning funding and personnel supporting the functions of the three air pollution control agencies administering CAA programs in Nevada: NDEP, Clark County Department of Air Quality, and Washoe County Health District's Air Quality Management Division (AQMD). If finalized as proposed, NDEP's 2012 revision to Section 12 will entirely replace the existing SIP version of Section 12, approved on May 31, 1972 (37 FR 10842), in the Nevada SIP.

Second, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(E)(ii)(i.e., State board conflict of interest requirements under CAA section 128), EPA is proposing to approve Nevada Revised Statutes (NRS) sections 232A.020, 281A.150, 281A.160, 281A.400, 281A.410, and 281A.420, as provided in Attachment B of Nevada's 2012 Submittal, into the Nevada SIP.

Third, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(J)(in part) and (M), EPA is proposing to approve a comprehensive revision to Section 11 ("Intergovernmental Consultation") of the Nevada SIP, which is included as Attachment D to Nevada's 2012 Submittal. Nevada's revision to Section 11 ("Intergovernmental Consultation") includes updated information concerning consultation among the three air pollution control agencies administering CAA programs in Nevada (NDEP, Clark County Department of Air Quality, and Washoe County Health District's Air Quality Management Division) as well as regional planning and transportation agencies that also have certain air-quality-planning-related responsibilities. If finalized as proposed, NDEP's 2012 revision to Section 11 will entirely replace the existing SIP version of Section 11, approved on May 31, 1972 (37 FR 10842), in the Nevada SIP.

Nevada's 2012 revision to Section 11 ("Intergovernmental Consultation") cites a number of statutes, two of which are included as exhibits to Section 11, NRS section 445B.503 ("Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program") and NRS

section 439.390 ("District board of health: Composition; qualifications of members"), that would be new to the SIP.²⁶ We have reviewed them and find them acceptable and are proposing to approve them in connection with our proposed approval of the 2012 revised Section 11 of the Nevada SIP.²⁷

Fourth, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(F)(ii) and (F)(iii), we note that EPA has proposed to approve three Nevada Administrative Code (NAC) sections cited by NDEP in its 2012 Submittal, NAC sections 445B.315(3), 445B.3368, and 445B.346, in a separate rulemaking (see 77 FR 38557, June 28, 2012). While we believe that the three cited NAC sections are generally supportive of the requirements of sections

²⁶ NDEP included, in attachment B of the 2012 Submittal, certain statutes for inclusion in the Nevada SIP in support of the Infrastructure SIP Submittals. While both NRS 445B.503 and NRS 439.390 are included as exhibits to revised Section 11 ("Intergovernmental Consultation"), only the former is included in attachment B to the 2012 Submittal. We have assumed that the absence of NRS 439.390 in attachment B was inadvertent, and that NDEP intends NRS 439.390 to be included in the Nevada SIP, but we request confirmation from NDEP on this matter.

²⁷ In the 2012 Submittal, NDEP also included an updated version of a statute that is also cited in the revised Section 11 ("Intergovernmental Consultation") but that is already approved into the SIP, NRS section 445B.500 ("Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties: regulation of certain electric plants prohibited"), approved at 71 FR 51766 (August 31, 2006). We have reviewed the updated version of NRS 445B.500 and note that the only changes relative to the existing SIP version of NRS 445B.500 relate to hearing boards, hearing officers, and school districts and, thus, are administrative in nature. As such, we propose herein to approve the updated version of NRS 445B.500 that was included in attachment B to the 2012 Submittal as a revision to the Nevada SIP.

110(a)(2)(F)(ii) and 110(a)(2)(F)(iii), we believe that the existing Nevada SIP, even without the three cited NAC sections, is adequate to meet the requirements of sections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) with respect to sources under NDEP jurisdiction. See our Overarching TSD.

Fifth and last, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(F), our proposed approval with respect to this element for the Washoe County portion of the SIP relies on final approval of four Washoe County rules, 030.218, 030.230, 030.235, and 030.970, that were included in the 2012 Submittal. We proposed approval of these four Washoe County rules in a separate rulemaking signed on July 19, 2012.²⁸

III.B. Proposed Disapprovals

EPA proposes to disapprove Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements (details of the partial approvals and partial disapprovals are presented after this list):

- Section 110(a)(2)(C)(in part): Program for enforcement of control measures and regulation of new and modified stationary sources.

²⁸ A copy of our separate, concurrent proposal is available in the docket for this action and online at <http://www.regulations.gov>, docket number EPA-R09-OAR-2011-0047.

- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport. (Please see our 2006 PM_{2.5} Transport TSD for our evaluation of Nevada's 2009 PM_{2.5} Submittal and 2009 PM_{2.5} Supplement regarding interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.)
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(F) (in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K) (in part): Air quality modeling and submission of modeling data.

As explained more fully in our Overarching TSD, we are proposing to disapprove Nevada's Infrastructure SIP Submittals for the NDEP and Washoe County portions of the SIP with respect to the permitting-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), 110(a)(2)(J), and 110(a)(2)(K) because the Nevada SIP does not fully satisfy the statutory and regulatory requirements for Prevention of Significant Deterioration (PSD) permit programs

under part C, title I of the Act. Both NDEP and Washoe County AQMD currently implement the Federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with EPA. See 40 CFR 52.1485.²⁹ Accordingly, although the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in both areas by the Federal PSD program.

For Section 110(a)(2)(C), we propose to approve Nevada's Infrastructure SIP Submittals with respect to the requirement that the SIP include a program to provide for enforcement of the emissions limitations described in section 110(a)(2)(A). For the permitting-related requirements of section 110(a)(2)(C), we propose to approve the Clark County portion of the SIP, contingent on finalizing our proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources,³⁰ and to disapprove the NDEP and Washoe County portions

²⁹ EPA fully delegated the implementation of the federal PSD programs to NDEP on October 19, 2004 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Nevada Division of Environmental Protection"), as updated on September 15, 2011, and to Washoe County (March 13, 2008 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Washoe County District Health Department").

³⁰ See EPA's proposal signed on July 13, 2012, and included in the docket of this infrastructure SIP proposal.

of the SIP, for the reasons discussed at the start of section III.B of this notice and our Overarching TSD.

With respect to the requirements regarding interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS, we propose to partially approve and partially disapprove Nevada's 2009 $PM_{2.5}$ Submittal and 2009 $PM_{2.5}$ Supplement. We propose to partially disapprove the submission because it relies on irrelevant factors and lacks any technical analysis to support the State's conclusion with respect to interstate transport. We also propose to partially approve the submission, however, based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Nevada do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state and that the existing Nevada SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. See our 2006 $PM_{2.5}$ Transport TSD.

For the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, EPA previously approved an interstate transport SIP submitted by Nevada as satisfying the requirements of CAA section 110(a)(D)(i)(I). See 72 FR 41629 (July 31, 2007).

For the requirement of CAA section 110(a)(2)(D)(i)(II) (regarding interference with other states' required measures to prevent significant deterioration of air quality), we propose to approve the Clark County portion of the SIP, and to disapprove the NDEP and Washoe County portions of the SIP, for the reasons discussed at the start of section III.B of this notice and our Overarching TSD. With respect to the requirement of CAA section 110(a)(2)(D)(i)(II) (regarding interference with other states' required measures to protect visibility), EPA previously approved Nevada's interstate transport SIP as satisfying this requirement for the 1997 ozone and 1997 PM_{2.5} NAAQS as part of EPA's action on Nevada's Regional Haze SIP. See 77 FR 17334 at 17339 (March 26, 2012). For purposes of the 2006 PM_{2.5} NAAQS, we propose the same interpretations and conclusions that we proposed as part of EPA's proposed action on the Nevada Regional Haze SIP. See 76 FR 36450 at 36466, June 22, 2011. In other words, we propose to find that Nevada's SIP-approved Regional Haze Plan contains adequate provisions to protect visibility in other states, and therefore meets the visibility requirement of CAA section 110(a)(2)(D)(II) for the 2006 PM_{2.5} NAAQS.³¹

³¹ Section IV.G.7 of the June 22, 2011 Regional Haze SIP proposal (see 76 FR 36450 at 36466) stated the following: "Section 110(a)(2)(D)(i)(II) of the Act requires SIP revisions to contain adequate provisions to prohibit any source or other types of emission activity within the state from emitting any air pollutant in amounts that will interfere with another state's plan to protect visibility. Nevada submitted its SIP for Interstate Transport to EPA on

With respect to the requirements of CAA section 110(a)(2)(D)(ii), EPA proposes to approve Nevada's Infrastructure SIP Submittals with respect to the Clark County portion of the Nevada SIP, contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources, and to disapprove the SIP with respect to the NDEP and Washoe County portions of the Nevada SIP, for the reasons discussed at the start of section III.B of this notice and in our Overarching TSD.

For Section 110(a)(2)(F), we propose to approve the Clark County portion of the SIP, contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources, for subsections 110(a)(2)(F)(i) and 110(a)(2)(F)(ii). See our Overarching TSD. We propose to disapprove subsection 110(a)(2)(F)(iii) for the Clark County portion of the SIP because Clark County has repealed its regulation, Section 24, that formerly addressed the

February 7, 2007, which EPA approved and promulgated in the Federal Register on July 31, 2007 (70 FR 41629). In our Federal Register Notice, we deferred action on whether Nevada interferes with other states' plans to address regional visibility impairment caused by regional haze until we received Nevada's Regional Haze SIP. As explained in Section IV.D.2. of this notice, NDEP relied on the [Western Regional Air Partnership's] source apportionment modeling to demonstrate that Nevada's emissions are projected to have a minimal contribution to sulfate and nitrate extinction in each of 24 Class I areas in five adjacent states. Moreover, none of the neighboring western states have requested emission reductions from Nevada in order to meet their [reasonable progress goals]. Therefore, in proposing to approve Nevada's [Regional Haze] SIP, we are proposing to find that this plan revision contains adequate provisions to protect visibility in other states."

correlation requirement of this subsection, without submitting a SIP revision to replace it. For the NDEP and Washoe County portions of the SIP, we propose to approve Nevada's Infrastructure SIP Submittals for all three subsections. Note, however, that our proposed approval of subsections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) for the Washoe County portion of the SIP is contingent on finalizing EPA's proposed approval of Washoe County Air Quality Regulations 030.218, 030.230, 030.235, and 030.970. See our Overarching TSD.

For Section 110(a)(2)(J) we propose to approve Nevada's Infrastructure SIP Submittals as meeting the consultation, public notification, and visibility requirements of this section. Our proposed approval with respect to the consultation requirements of this section are contingent on finalizing EPA's proposed approval of certain provisions of Nevada's 2012 Submittal, as described in section III.A of this notice. For the permitting-related requirements of section 110(a)(2)(J), we propose to approve the Clark County portion of the SIP, contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources, and to disapprove the NDEP and Washoe County portions of the SIP, for the reasons discussed at the start of section III.B of this notice and in our Overarching TSD.

For Section 110(a)(2)(K), we propose to approve the Clark County portion of the SIP contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources. See our Overarching TSD. We propose to disapprove the NDEP and Washoe County portions of the SIP with respect to the permit modeling requirements of section 110(a)(2)(K), for the reasons discussed at the start of section III.B of this notice and our Overarching TSD.

EPA takes very seriously a proposal to disapprove a state plan, as we believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act. Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these proposed disapprovals are the only path that is consistent with the Act at this time.

III.C. Alternative Proposed Disapprovals (Parallel Processing)

Several of our proposed approvals rely on Nevada's 2012 Submittal, which was made under the parallel processing mechanism provided by 40 CFR Part 51, Appendix V, Section 2.3. If Nevada is not able to submit the fully adopted SIP revision anticipated by its 2012 Submittal by the end of August 2012, as stated in the letter transmitting the 2012 Submittal, EPA must still take final action by September 30, 2012, consistent with the terms of the consent decree entered October 20, 2011 in *WildEarth Guardians v. EPA*, Case No. 3:11-cv-00190 and the settlement agreement entered November 30, 2011 in *Sierra Club et al v. Lisa Jackson*, Case No. 3:10-cv-04060-CRB, as amended. Therefore, as a contingency for such a case, we propose, in the alternative, to disapprove Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements.

For Section 110(a)(2)(E), in the absence of the anticipated SIP revisions, Nevada's 2008 Ozone Submittal, 2008 PM_{2.5} Submittal, 2009 PM_{2.5} Submittal, and 2009 PM_{2.5} Supplement have not provided necessary assurances of adequate personnel and funding for Clark County DAQ and Washoe County AQMD to carry out the SIP, as required by section 110(a)(2)(E)(i).³² More broadly,

³² In its 2008 and 2009 Infrastructure SIP Submittals, Nevada did not submit any information on personnel or funding for Clark County and did so for Washoe County only for the 2006 PM_{2.5} NAAQS.

the SIP still contains outdated information in Section 12 ("Resources"), as approved on May 31, 1972 (37 FR 10842). On this basis, we propose, in the alternative, to disapprove Nevada's 2008 and 2009 Infrastructure SIP Submittals for the subsection 110(a)(2)(E)(i). Nonetheless, Nevada has provided necessary assurances of adequate legal authority to carry out the SIP at both the state and county levels. In other words, our proposed approval regarding the Nevada's legal authority for subsections 110(a)(2)(E)(i) and 110(a)(2)(E)(iii) do not rely on Nevada's 2012 Submittal.

With respect to CAA section 110(a)(2)(E)(ii), pertaining to conflict of interest requirements, absent receipt of the SIP revisions embodied by Nevada's 2012 Submittal - especially the Nevada Ethics in Government statutory provisions included in that submittal - we propose, in the alternative, to disapprove Nevada's 2008 and 2009 Infrastructure SIP Submittals as they do not address the various conflict of interest requirements.

Our proposed approval of subsections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) for the Washoe County portion of the SIP are contingent upon finalizing EPA's proposed approval of four Washoe County regulations. Thus, absent receipt of these SIP revisions as embodied by Nevada's 2012 Submittal, we propose, in the alternative, to disapprove these two subsections for the

Washoe County portion of the SIP because the local regulations supportive of these requirements are currently not in the SIP.

Lastly, in the absence of the SIP revisions anticipated by Nevada's 2012 Submittal, Nevada's formal submittals (i.e., the 2008 Ozone Submittal, 2008 PM_{2.5} Submittal, 2009 PM_{2.5} Submittal, and 2009 PM_{2.5} Supplement) have not met the consultation requirements of sections 110(a)(2)(J) and 110(a)(2)(M).³³ These four submittals highlight provisions for notification and opportunity for comment in connection with rulemaking and issuing permits and make a commitment to maintain a process of consultation.

However, sections 110(a)(2)(J) and 110(a)(2)(M) address more than just rulemaking or permits, although such consultation may be relevant as part of the process for consultation required under CAA section 121. Moreover, a commitment to maintain an acceptable process of consultation is not a substitute for the identification of the process itself as part of the Nevada SIP. More broadly, the SIP still contains outdated information in

³³ In its 2008 and 2009 Infrastructure SIP Submittals, Nevada did not submit any information about consultation within Clark County. For Washoe County, the 2009 PM_{2.5} Supplement included a copy of the "Interlocal Agreement Concerning the Washoe County District Health Department" as Attachment D. This agreement partially addresses the consultation requirements of CAA sections 110(a)(2)(J) and (M), since it defines membership and other aspects of the DBOH's operation such that Washoe County and the two incorporated cities (Reno and Sparks) each have two representatives on the seven-member DBOH. However, it is insufficient to address the consultation requirements of CAA section 121. For example, it does not identify a process to consult with Federal Land Managers having authority over Federal land affected by the County's air plans.

Section 11 ("Intergovernmental Relations"), as approved on May 31, 1972 (37 FR 10842). While the Nevada SIP does have a number of statutes that authorize the state and counties to cooperate with local governments (see, e.g., NRS 445B.210, 445B.220, 445B.235, and 445B.500), such cooperation is optional and similarly not a substitute for a process for consultation that exists as part of the SIP. On this basis, we propose, in the alternative, to disapprove Nevada's 2008 and 2009 Infrastructure SIP Submittals with respect to the consultation requirements of section 110(a)(2)(J) and section 110(a)(2)(M).

III.D. Alternative Proposed Disapprovals (Clark County NSR)

Several proposed approvals for the Clark County portion of the SIP rely on EPA finalizing its proposal of July 13, 2012 on Clark County's NSR program revisions. If EPA is unable to finalize the approvals embodied in that proposal, upon which our infrastructure SIP proposal relies (see our Overarching TSD for more details), EPA must still take final action by September 30, 2012, consistent with the terms of the consent decree entered October 20, 2011 in *WildEarth Guardians v. EPA*, Case No. 3:11-cv-00190 and the settlement agreement entered November 30, 2011 in *Sierra Club et al v. Lisa Jackson*, Case No. 3:10-cv-04060-CRB, as amended. As a contingency for such a case, EPA proposes, in the alternative, to disapprove Nevada's Infrastructure SIP

Submittals for the Clark County portion of the SIP with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(C), pertaining to the requirement for a program for the review of new or modified stationary sources, including the PSD requirements under CAA title 1, part C;
- Section 110(a)(2)(D)(i)(II), pertaining to interference with other states' required measures to prevent significant deterioration of air quality;
- Section 110(a)(2)(D)(ii), pertaining to notification of other states affected by new or modified stationary sources, as per section 126(a);
- Section 110(a)(2)(F)(i) and 110(a)(2)(F)(ii), pertaining to the installation, maintenance, and replacement of equipment to monitor emissions from stationary sources, and periodic reports on those emissions;
- Section 110(a)(2)(J), pertaining to CAA title 1, part C (relating to prevention of significant deterioration of air quality); and
- Section 110(a)(2)(K), pertaining to permit modeling.

III.E. Discussion of CAA SIP Revision Requirements

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable

requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. All of the elements of Nevada's Infrastructure SIP Submittals that we are proposing to approve, as explained in our Overarching TSD and Section 128 TSD, would improve the SIP by replacing obsolete provisions and by providing new provisions addressing the resources, conflict of interest, stationary source monitoring, and consultation requirements of the CAA. We propose to determine that our approval of these elements of Nevada's Infrastructure SIP Submittals would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the submitted SIP revision clarifies and updates the SIP. Our Overarching TSD and Section 128 TSD contain a more detailed discussion of our evaluation.

III.F. Consequences of Proposed Disapprovals

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Nevada's Infrastructure SIP Submittals were not submitted to meet either

of these requirements. Therefore, any action we take to finalize the described partial disapprovals will not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a State implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. With respect to our proposed partial approval and partial disapproval of Nevada's submissions related to interstate transport under CAA section 110(a)(2)(D)(i)(I), however, we propose to conclude that any FIP obligation resulting from finalization of the partial disapproval would be satisfied by our determination that there is no deficiency in the SIP to correct. Finalization of this proposed disapproval also would not require any further action on Nevada's part given EPA's conclusion that the SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.

IV. Statutory and Executive Order Reviews

IV.A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

IV.B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

IV.C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by

the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

IV.D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve certain pre-existing requirements, and to disapprove certain other pre-existing requirements, under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

IV.E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have

federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

IV.F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it

will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

IV.G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP.

IV.H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

IV.I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

IV.J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 20, 2012

Signed: Jared Blumenfeld,
Regional Administrator,
Region IX.

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